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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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5 PB FARRADYNE, INC., a Maryland
corporation,

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Plaintiff,

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8 THOMAS D. PETERSON, individually and
9 doing business as TRAFFIC ASSIST (a
California company),

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Defendant.

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Case No.: C-05-3447 (SI)
The Honorable Susan Illston

[PROPOSED] STIPULATED
PROTECTIVE ORDER

1 The parties to this action, plaintiff PB FARRADYNE, INC., a Maryland corporation, (“PB
 2 Farradyne” or “plaintiff”) and defendant THOMAS PETERSON, individually and doing business
 3 as TRAFFIC ASSIST (“Peterson”), by and through their respective undersigned counsel, hereby
 4 stipulate to and request the entry of, the following Protective Order:

5 1. All documents, materials, items, and/or information produced either by a party or by
 6 a third party to or for any of the parties in this case shall be governed by this Protective Order.

7 2. Any information or materials produced by any party or third party as part of discovery
 8 in this action may be designated by such party or third party as (1) “Confidential” or (2) “Highly
 9 Confidential – Attorneys’ Eyes Only” under the terms of this Protective Order. Absent a specific
 10 order by this Court, such designated information shall be used by the parties and their counsel
 11 solely in connection with this litigation, and not for any business, competitive, or governmental
 12 purpose or function, or any other litigation, and such information shall not be disclosed to anyone
 13 except as provided herein. For the purposes of this Protective Order, a party that receives such
 14 information or materials is the Receiving Party and the party that produces them is the Producing
 15 Party.

16 3. As a general guideline, information or materials designated as “Confidential” shall be
 17 those things that may be disclosed to the parties for the purposes of the litigation, but which should
 18 be protected against disclosure to third parties. Examples of such information or materials include
 19 materials a party reasonably and in good faith believes contain or disclose information that the
 20 party, in the ordinary course of business, does not or would not publicly disclose, or information
 21 that a party is under a preexisting obligation to maintain as confidential.

22 4. As a further general guideline, information or materials designated as “Highly
 23 Confidential – Attorneys’ Eyes Only” shall be those things of a proprietary business or technical
 24 nature that would be of value to a competitor or potential customer of the party or third party
 25 holding the proprietary rights thereto, and whose disclosure to the other party or to a non-party
 26 would create a substantial risk of serious injury that could not be avoided by less restrictive means.
 27 Examples of such information or materials may include a party’s trade secrets; confidential
 28 technical or business information; technical practices; methods or other know-how; present or

1 future marketing plans; product profit data or other projections; patent applications; financial data;
 2 business strategy; confidential agreements or relationships with third parties; or materials that a
 3 party is under a pre-existing obligation to a third party to treat as such.

4 5. The designation of information or material as "Confidential" or "Highly Confidential
 5 – Attorneys' Eyes Only" for purposes of this Protective Order shall be made in the following
 6 manner by the party or third party seeking protection:

7 (a) in the case of documents, exhibits, briefs, memoranda, interrogatory
 8 responses, responses to requests for admission, or other materials (apart from depositions or other
 9 pretrial testimony): by affixing the legend "Confidential" or "Highly Confidential – Attorneys'
 10 Eyes Only," as appropriate, to each page containing any confidential information or material at the
 11 time such documents are produced or such information is disclosed, or as soon thereafter as the
 12 party or third party seeking protection becomes aware of the confidential nature of the information
 13 or material disclosed and sought to be protected hereunder. No liability or sanctions, however,
 14 shall arise or be imposed for any disclosure by the receiving party before such post-production
 15 designation to those not authorized to view the materials under this Protective Order after such
 16 post-production designation.

17 (b) in the case of depositions or other pretrial testimony: by a statement on the
 18 record, by counsel, during such deposition or other pretrial proceeding that the entire transcript or
 19 a portion thereof shall be designated as "Confidential" or "Highly Confidential – Attorneys' Eyes
 20 Only," as appropriate, hereunder. When it is impractical to identify separately each portion of
 21 testimony that is entitled to protection, or when it appears that substantial portions of the testimony
 22 may qualify for protection, or by agreement of the parties, designating party may invoke on the
 23 record (before the deposition of proceeding is concluded) a right to have up to twenty (20)
 24 calendar days after receipt of an electronic rough draft of the deposition transcript to identify the
 25 specific portions of the testimony as to which protection is sought and to specify the level of
 26 protection being asserted "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 27 EYES ONLY" before final paper transcript is released. Nothing in this procedure will prevent any
 28 counsel of record from receiving a copy of the rough draft or electronic copy of the transcript from

1 the court reporter at the same time as the counsel for the witness or party examined. The parties
 2 shall treat all deposition and other pretrial testimony as "Highly Confidential – Attorneys' Eyes
 3 Only" hereunder until the expiration of ten (10) calendar days after the mailing by the court
 4 reporter to counsel of the final paper transcript of the testimony. Unless so designated, any
 5 confidentiality is waived after the expiration of the ten (10) calendar day period unless otherwise
 6 stipulated or ordered. The parties may modify this procedure for any particular deposition or
 7 proceeding through agreement on the record at such deposition or proceeding or otherwise by
 8 written stipulation, without further order of the Court; provided, however, that any such
 9 modification is subject to review by the Court, if appropriate. If any document or information
 10 designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" is used during the
 11 course of a deposition, that portion of the deposition record reflecting such confidential
 12 information shall be sealed and stamped with the designated degree of confidentiality, and access
 13 thereto shall be limited pursuant to the other terms of this Protective Order.

14 (c) With respect to any testimony elicited during any deposition, whenever
 15 counsel for any party deems that any question or line of questioning calls for or has resulted in
 16 disclosure of information that should be treated as "Confidential" or "Highly Confidential –
 17 Attorneys' Eyes Only" and any representative of a party (or any other person) is in attendance at
 18 the deposition who is not a party to whom disclosure of such information is permitted pursuant to
 19 this Order, and such representative is not the witness being examined, such representative shall be
 20 excluded from those portions of the proceeding during which disclosure of the information
 21 designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only," as the case may be,
 22 occurs.

23 (d) Each party or non-party that designates information as "Confidential" or
 24 "Highly Confidential – Attorneys' Eyes Only" under this Order must take care to limit any such
 25 designation to specific material that qualifies under the appropriate standards. A Designating Party
 26 must take care to designate as "Confidential" or "Highly Confidential" – Attorneys' Eyes Only"
 27 only those parts of documents that qualify, so that other portions of the documents and items for

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1 which protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
 2 indiscriminate, or routinized designations are prohibited.

3 6. Information or material designated as "Confidential," or copies or extracts
 4 therefrom and compilations and summaries thereof, may be disclosed, summarized, described,
 5 characterized, or otherwise communicated or made available in whole or in part only to the
 6 following persons:

7 (a) the parties' respective outside counsel ("Outside Counsel") in this action,
 8 and regular and temporary employees of such counsel to whom it is necessary that the information
 9 or material be shown for the purposes of this litigation;

10 (b) three (3) designated employees and one (1) designated in-house counsel of
 11 each party whose assistance is needed by counsel for the purposes of this litigation, subject to and
 12 conditioned upon compliance with Paragraphs 8 and 9 herein;

13 (c) consultants who have been retained by a party or counsel of record in this
 14 litigation for purposes of assisting in the preparation of this litigation for trial and who have been
 15 qualified pursuant to paragraphs 8 and 9 of this Protective Order (such as independent accountants,
 16 statisticians, economists, technical consultants, or other technical experts);

17 (d) the Court, Court personnel, jurors, and others employed by the Court;

18 (e) court reporters and employees of court reporters engaged in connection with
 19 this action to record and transcribe testimony in this litigation who have agreed to be bound by and
 20 comply with this Protective Order, and any outside copy services who have agreed to be bound by
 21 and comply with this Protective Order;

22 (f) third party contractors, including their employees and agents, involved
 23 solely in one or more aspects of graphics or design services for purposes of preparing
 24 demonstrative exhibits, organizing, filing, copying, coding, converting, sorting, translating, or
 25 retrieving data or designing programs for handling data connected with this action, including the
 26 performance of such duties in relation to a computerized litigation support system, subject to and
 27 conditioned upon compliance with Paragraph 8 herein;

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- 1 (g) non-technical jury or trial consulting services retained by counsel for a
 2 party, subject to and conditioned upon compliance with Paragraph 8 herein;
 3 (h) any authors or recipients of the information or materials marked
 4 Confidential and, in the case of information or materials prepared in connection with the author's
 5 employment, any witnesses currently employed by the same entity that employed the author at the
 6 time the information or materials were created;
 7 (i) any other person only upon order of the Court or upon written consent of the
 8 Producing Party.

9 7. Information or material designated as "Highly Confidential – Attorneys' Eyes
 10 Only," or copies or extracts therefrom and compilations and summaries thereof, may be disclosed,
 11 summarized, described, characterized, or otherwise communicated or made available in whole or
 12 in part only to the persons of paragraph 6(a) and 6(c)-(i). Notwithstanding the provisions of this
 13 paragraph, information designated "Highly Confidential – Attorneys' Eyes Only" by a Producing
 14 Party may not be disclosed to any individual whose duties include participating directly or
 15 indirectly in the preparation or prosecution of any patent application (including without limitation
 16 the drafting of patent claims or reissue or reexamination proceedings) on behalf of a Receiving
 17 Party during any time prior to the expiration of two years following the final resolution of this
 18 lawsuit (including appeals).

19 8. All persons listed in Paragraphs 6(b), (c), (f), or (g), above may be given access to
 20 information or material designated as "Confidential," and all persons listed in paragraphs 6(c), (f),
 21 or (g) above may be given access to information or material designated as "Highly Confidential –
 22 Attorneys' Eyes Only," only after they first confirm their understanding and agreement to abide by
 23 the terms of this Protective Order by completing and signing a copy of an undertaking in the form
 24 attached hereto as Exhibit A.

25 9. The procedure for having a party employee, party in-house counsel, or consultant
 26 approved for access to designated information or materials shall be as follows:
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1 (a) The party seeking to have an employee or in-house counsel, as defined in
 2 Paragraph 6(b) herein, approved shall provide the other parties with such person's name and title,
 3 and a copy of a completed and signed undertaking in the form attached hereto as Exhibit A.

4 (b) The party seeking to have a consultant, as defined in Paragraph 6(c) herein,
 5 approved shall provide the other parties with a current resume or curriculum vitae of such person,
 6 which shall identify their past and present employment, as well as persons or entities with whom
 7 the consultant has been engaged in any consulting relationships for the last five years as well as a
 8 brief description of the subject matter of that consulting work, and a copy of a completed and
 9 signed undertaking in the form attached hereto as Exhibit A.

10 (c) Within ten (10) calendar days after mailing (via overnight delivery) of the
 11 information and signed undertaking by the party seeking approval, any other party may object to
 12 the person proposed for approval. Failure to object within ten (10) days to a person proposed shall
 13 be deemed approval, but shall not preclude a party from objecting to continued access of
 14 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" information by that person where
 15 new facts suggesting a basis for objection are subsequently learned by the party or its counsel.

16 (d) If any other party so objects, the parties shall, within five (5) days from the
 17 date of the mailing of the notice of objection, confer and attempt to resolve the dispute. At that
 18 conference the objecting party shall inform the party requesting approval of its reasons for
 19 objecting to the designated person. If the parties cannot resolve the dispute, or if the conference
 20 does not take place, then within thirty (30) days from the date of the mailing of notice of objection,
 21 the objecting party may move the Court for an order that access to information designated
 22 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" be denied to the designated
 23 person. These time periods are not to restrict any party from moving for a Court order earlier if the
 24 circumstances so require. Failure by the objecting party to timely move the Court for such an
 25 order shall be deemed approval.

26 10. "Highly Confidential – Computer Source Code." "Computer Source Code" is
 27 defined herein as computer source code or similar highly confidential programming statements
 28 and/or instructions that in general are converted into machine language by compilers, assemblers

1 or interpreters and source code-related documents that are held by a party within its source code
 2 control system. Computer Source Code will be produced in electronic form unless only a printed
 3 copy is available. In either event, Computer Source Code may be so designated by affixing the
 4 following legend on paper copies of the code or on the media itself (such as a label on a diskette or
 5 CD-ROM):

6 **Highly Confidential – Computer Source Code**

7 Information designated as Highly Confidential – Computer Source Code shall be subject to
 8 all of the restrictions applicable to information designated as Highly Confidential and in addition
 9 subject to the restrictions below. Except as provided in paragraph 10(e) below, in no event shall
 10 an employee, officer, or director of a party to this action or of any competitor of any party to this
 11 action have access to Computer Source Code without a court order or the written consent of the
 12 Producing Party.

13 (a) Storage and Copying of Computer Source Code. Because of the highly sensitive
 14 nature of Computer Source Code and because of the ease with which electronic media may be
 15 copied, transported, or stolen, Computer Source Code may not be copied or stored by any person
 16 acting on behalf of a Requesting Party permitted to have access to the same (an “authorized
 17 person”), except as expressly permitted herein.

18 (i) Subject to paragraph 3.2.2 below, when a Producing Party produces
 19 Computer Source Code in electronic form (e.g., on diskette, CD-ROM,
 20 DVD, etc.), no authorized person may copy such Computer Source Code
 21 onto any form of electronic media, including without limitation, hard
 22 drives, removable electronic media (such as diskettes, CD-ROM, DVD, PC
 23 card, flash media, etc.), or network servers, except to the extent loaded into
 24 RAM or virtual RAM as required by a computer’s operating system for
 25 viewing or analysis purposes.

26 (ii) To reduce the possibility of theft by, for example, a computer “hacker,” an
 27 authorized person may only view, analyze or otherwise use a Producing
 28 Party’s Computer Source Code on a computer that, at the time of such

viewing, analysis or other use, is completely "stand alone" and not linked to any network, including a local area network ("LAN"), an intranet or the Internet. In the event that the authorized person's computer is normally connected to such a network, the computer must be disconnected from that network at such times that the Computer Source Code is actually being viewed, analyzed or otherwise used. Typically this only requires that the computer's network cable be unplugged or in the case of wireless networks, that the wireless access card be removed or otherwise disabled.

- (iii) The Computer Source Code must always be removed from the computer when it is not currently being viewed, analyzed or otherwise used, and at such times of non-use, the Computer Source Code shall securely be stored in a location accessible only to authorized persons, apart from the computer, so that should the computer be lost or stolen, the Computer Source Code shall remain safe.
- (iv) At the time an authorized person uses a computer to view, analyze or otherwise use a Producing Party's Computer Source Code, that computer must remain within the direct control of that person.

(b) Excerpting Computer Source Code. An authorized person may excerpt portions of a Producing Party's Computer Source Code onto paper or electronic media (such as into an electronically stored brief) for the purpose of creating submissions to the Court or for presentation at hearings or at trial, but only if the following provisions are satisfied.

- (i) The number of pages of a Producing Party's Computer Source Code copied onto paper (collectively, the "Computer Source Code excerpts") may not, in the aggregate, exceed eighty (80) pages, unless otherwise permitted by a prior order of the Court, or unless otherwise permitted by the prior written authorization of the Producing Party's counsel. Any and all such Computer Source Code excerpts shall be marked "Highly Confidential – Computer Source Code." and to the extent submitted to the Court or presented at

1 hearings or at trial, subject to the same requirements as Confidential
 2 Information designated Highly Confidential. Otherwise, any and all
 3 Computer Source Code excerpts shall be treated and handled as Computer
 4 Source Code. Should such excerpts thereafter be transferred back to
 5 electronic media, such media shall continue to be labeled "Highly
 6 Confidential -- Computer Source Code." and shall once again be treated as
 7 such.

8 (ii) Absent prior order of the Court, or unless otherwise permitted by the prior
 9 written authorization of the Producing Party's counsel, not more than two
 10 (2) pages of a Producing Party's Computer Source Code may be copied
 11 electronically into a brief for submission to the Court, or otherwise for
 12 presentation at a hearing or at trial. Any such submitted brief shall be
 13 marked "Highly Confidential – Computer Source Code." and access
 14 thereto shall continue to be limited to authorized persons. In the event that
 15 such brief or presentation is stored electronically on a computer network, it
 16 shall be password protected so as to limit access to authorized persons.

17 (c) Transporting Computer Source Code. A Producing Party's Computer Source Code
 18 and/or Computer Source Code excerpts may not be transported in any way except as follows:

- 19 (i) They may be transported only at the direction of an authorized person to
 20 another authorized person;
- 21 (ii) They may be transported only on paper or removable electronic media (e.g., a
 22 diskette or CD-ROM) via hand carry, Federal Express or other similarly
 23 reliable courier;
- 24 (iii) The information contained on Computer Source Code and/or Computer
 25 Source Code excerpts may not be transported or transmitted electronically
 26 over a network of any kind, including over a local area network (LAN),
 27 intranet or the Internet.

1 (d) Transporting a Computer Containing Computer Source Code. No computer
 2 containing a copy of a Producing Party's Computer Source Code or Computer Source Code
 3 excerpts, whether loaded into its RAM or onto its hard drive or other storage media of the
 4 computer, shall be transported until such copies are purged from the computer, so that should the
 5 computer be lost or stolen, the Computer Source Code shall remain safe. Computer media
 6 containing Computer Source Code shall be erased by a secure erase method that complies with
 7 Department of Defense standard 5220.22-M.

8 (e) As an exception to the above, Mr. Peterson may review up to two pages of
 9 Computer Source Code produced by PB Farradyne but, if he does so, he shall be precluded from
 10 (i) using that Computer Source Code or any information derived from it for any purpose other than
 11 the prosecution or defense of his claims and defenses in this litigation or any appeal therefrom and
 12 shall not use it for any business, commercial, competitive, personal, or other purpose, or (ii) filing,
 13 in any patent application or in any response to any office action, including any original, divisional,
 14 continuation, continuation-in-part, renewal, extension, reexamination, reissue, and foreign
 15 counterparts of existing or future patents or patent applications, any new or amended patent claim
 16 related to or concerning the subject matter of the portion of any Computer Source Code that he
 17 reviews ("the Reviewed Portion"). Before providing any Computer Source Code of PB Farradyne
 18 to Mr. Peterson for review, Mr. Peterson's counsel shall identify specifically to PB Farradyne's
 19 counsel the Reviewed Portion that counsel proposes to disclose to Mr. Peterson. In response, PB
 20 Farradyne's counsel shall provide Mr. Peterson's counsel with a list of subject matter categories
 21 considered to be 'related to or concerning' the Reviewed Portion and to which the preclusion
 22 provision in clause (ii) of this paragraph shall apply. If Mr. Peterson's counsel believes that the
 23 list provided by counsel for PB Farradyne is overbroad (*i.e.*, broader than necessary to provide
 24 reasonable protection for PB Farradyne's trade secrets or confidential business information in the
 25 Review Portion), then the parties shall meet and confer over proper wording of the categories, and
 26 if they cannot agree, Mr. Peterson's counsel may elect to bring the dispute to the Court for
 27 resolution, but in no event shall Mr. Peterson be provided any Computer Source Code for review,
 28 absent a further court order, unless and until Mr. Peterson has agreed in writing to be precluded

1 from the above-stated actions as to agreed-upon subject matter categories. Disclosure to PB
 2 Farradyne's counsel of information required under this paragraph does not waive any attorney-
 3 client privilege or work product protection belonging to Mr. Peterson, but attorney-client privilege
 4 or work product protection will not be asserted to bar questions about what parts of PB
 5 Farradyne's Computer Source Code, if any, Mr. Peterson saw, when he saw such Code, any
 6 actions he subsequently took concerning any patent-related activity, or the occurrence or non-
 7 occurrence of any acts precluded by clauses (i) or (ii), above. Mr. Peterson will not be given
 8 custody or control of the Reviewed Portion; rather, it shall remain in the custody and control of
 9 persons otherwise authorized to review PB Farradyne's Computer Source Code during any review
 10 by Mr. Peterson. The limitations in clause (ii) of this paragraph shall not apply to any patent claim
 11 having an effective filing date one year or more after the final termination of this Action. If Mr.
 12 Peterson reviews any Computer Source Code of PB Farradyne, he shall promptly identify to
 13 attorneys for PB Farradyne, by reference to publicly accessible online records of the U.S. Patent &
 14 Trademark Office, or by producing a complete copy, of any patent applications or other
 15 communications between Mr. Peterson or his representative and the U.S. Patent & Trademark
 16 Office that are then existing or that come into existence at any time before one year after the final
 17 termination of this Action, for the purpose of allowing PB Farradyne's attorneys to verify Mr.
 18 Peterson's compliance with the limitation in clause (ii) of this paragraph. Mr. Peterson may
 19 designate such documents, if not publicly available from the U.S. Patent & Trademark Office, as
 20 Attorneys Eyes Only under this Order.

21 11. For applications and motions to the Court on which a party submits materials
 22 marked as "Confidential" or "Highly Confidential – Attorneys' Eyes Only," all documents and
 23 chamber copies containing the materials so marked shall be filed with the Court in sealed
 24 envelopes or other appropriate sealed containers. The word "Confidential" shall be stamped on
 25 the envelope and a statement substantially in the following form shall also be printed on the
 26 envelope(s):

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1 This envelope is sealed pursuant to Order of the Court, contains Confidential Information
 2 and is not to be opened or the contents revealed, except by Order of the Court or agreement by the
 3 parties.

4 12. No party shall be obligated to challenge the propriety of the designation of any
 5 material as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” and a failure to do so
 6 shall not preclude any subsequent objection to such designation or motion to seek permission to
 7 disclose such material or the information contained therein to persons not identified in this Order,
 8 or from otherwise modifying the provisions of this Order.

9 13. A party may challenge another party's designation of information or materials
 10 produced herein as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by serving a
 11 written objection upon the producing party. The producing party shall notify the challenging party
 12 in writing of the bases for the asserted designation. The parties shall confer in good faith as to the
 13 validity of the designation. To the extent the parties are unable to reach an agreement as to the
 14 designation, the objecting party may make an appropriate application to this Court, with
 15 confidential portions thereof to be kept under seal, requesting that specifically identified
 16 documents, information, and/or deposition testimony be excluded from the provisions of this
 17 Protective Order or downgraded in terms of the degree of protection provided. Until a dispute
 18 over the asserted designation is finally resolved by the parties or the Court, all parties and persons
 19 shall treat the information or materials in question as designated.

20 14. Entering into, agreeing to, and/or producing or receiving information or material
 21 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” or otherwise
 22 complying with the terms of this Protective Order shall not:

23 (a) operate as an admission by any party that any particular information or material
 24 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” contains or reflects
 25 trade secrets, proprietary or commercially sensitive information, or any other type of confidential
 26 information;

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1 (b) operate as an admission by any party that the restrictions and procedures set
2 forth herein constitute or do not constitute adequate protection for any particular information
3 deemed by any party to be "Confidential" or "Highly Confidential – Attorneys' Eyes Only";

4 (c) prejudice in any way the rights of the parties to object to the production of
5 documents they consider not subject to discovery;

6 (d) prejudice in any way the rights of any party to object to the authenticity or
7 admissibility into evidence of any document, testimony or other evidence subject to this Protective
8 Order;

9 (e) prejudice in any way the rights of a party to seek a determination by the Court
10 whether any information or material should be subject to the terms of this Protective Order;

11 (f) prejudice in any way the rights of a party to petition the Court for a further
12 protective order relating to any purportedly confidential information;

13 (g) prejudice in any way the rights of a party to make a showing that information or
14 materials of proprietary or competitive value, but which is not specifically included in the
15 categories of "Highly Confidential – Attorneys' Eyes Only" information or materials itemized in
16 Paragraph 4 above, is properly designated "Highly Confidential – Attorneys' Eyes Only"; or

17 (h) prevent the parties to this Protective Order from agreeing in writing or on the
18 record during a deposition or hearing in this action to alter or waive the provisions or protections
19 provided for herein with respect to any particular information or material produced by the parties.

20 15. This Protective Order has no effect upon, and shall not apply to, a party's use or
21 disclosure of its own confidential information for any purpose. Nothing contained herein shall
22 impose any restrictions on the use or disclosure by a party of documents, information or material
23 designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" obtained lawfully
24 by such party independently of any proceedings in this action, or which:

25 (a) was already known to such party by lawful means prior to acquisition from, or
26 disclosure by, another party in this action;

27 (b) is or becomes publicly known through no fault or act of such party; or

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(c) is rightfully received by such party from a third party which has authority to provide such information or material and without restriction as to disclosure.

3 16. Any party or third party who inadvertently fails to designate information or
4 materials as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” or otherwise wishes
5 to change the designation of confidentiality under this Protective Order, may later do so, and such
6 document/information shall be treated by all other parties as being so designated from the time of
7 the notification in writing of the inadvertent designation. A party shall correct its failure to mark
8 an item as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in writing
9 accompanied by substitute copies of each item, container or folder, appropriately marked
10 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to this Protective Order.
11 The inadvertent disclosure of information and materials marked as “Confidential” or “Highly
12 Confidential – Attorneys’ Eyes Only” by the producing party in producing discovery, regardless of
13 whether the information was designated as “Confidential” or “Highly Confidential – Attorneys’
14 Eyes Only” at the time of disclosure, shall not be treated as a waiver in whole or in part of a
15 producing party’s claim of confidentiality, either as to the specific information disclosed or as to
16 any other information relating thereto or on the same or related subject, and each party agrees to
17 make reasonable efforts to preserve the confidentiality of the inadvertently disclosed information.
18 As soon as the receiving party has notice of the inadvertent production, the receiving party must
19 endeavor in good faith to obtain all copies of the document which it distributed or disclosed to
20 persons not authorized to access such information by Paragraphs 6 or 7 above, as well as any
21 copies made by such persons.

22 17. If a producing party inadvertently discloses to a receiving party any information that
23 is privileged or otherwise immune from discovery, said producing party shall promptly upon
24 discovery of such disclosure advise the receiving party in writing and request that the item or items
25 of information be returned. In that event, the disclosure shall not serve as a waiver of any privilege
26 or immunity. The provisions of this paragraph shall not apply to any disclosure when the material
27 disclosed is relied upon by the producing party during trial or in support of any position taken
28 before the Court.

1 18. Information produced by a third party in this proceeding and designated in
 2 conformity with the provisions of this Protective Order shall be subject to the provisions herein
 3 and provide the third party with all of the rights and obligations set forth herein. In order to
 4 expedite third party discovery, a copy of this Protective Order and a letter generally informing the
 5 third party of its right to invoke the protections set out herein shall be served with all such
 6 discovery.

7 19. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use
 8 of materials marked as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" at trial.

9 20. Within sixty (60) days after receiving notice of the entry of an order, judgment or
 10 decree finally disposing of this action, including any appeals therefrom, all persons having
 11 received information or material designated as "Confidential" or "Highly Confidential –
 12 Attorneys' Eyes Only" hereunder, except the Court and those employed by the Court, shall return
 13 such material and all copies thereof (including summaries and excerpts) to counsel for the
 14 producing party or, alternatively, shall destroy such material and provide written certification of
 15 such destruction to counsel for the producing party. Notwithstanding the foregoing, Counsel
 16 described in paragraphs 6(a) above shall be entitled to retain court papers, deposition transcripts
 17 and attorney work product (including court papers, transcripts, and attorney work product that
 18 contain information or material designated as "Confidential" or "Highly Confidential – Attorneys'
 19 Eyes Only"). All materials returned to the parties or their counsel by the Court likewise shall be
 20 disposed of in accordance with this paragraph.

21 21. If any party (a) is subpoenaed in another action, (b) is served with a demand in
 22 another action to which it is a party, or (c) is served with any other legal process by one not a party
 23 to this action, seeking information or material which was produced or designated as "Confidential"
 24 or "Highly Confidential – Attorneys' Eyes Only" by someone other than that party, the party shall
 25 give prompt actual written notice, by hand or facsimile transmission, within ten (10) days of
 26 receipt of such subpoena, demand or legal process, to those who produced or designated the
 27 information or material "Confidential" or "Highly Confidential – Attorneys' Eyes Only," shall
 28 furnish the producing party with a copy of said subpoena or other process or order, shall object to

1 its production by setting forth the existence of this Protective Order, and shall reasonably
2 cooperate with respect to any procedure sought to be pursued by the party whose interest may be
3 affected. The producing party asserting the confidential treatment shall have the burden of
4 defending against such subpoena, process or order. Nothing herein shall be construed as requiring
5 the party or anyone else covered by this Protective Order to challenge or appeal any order requiring
6 production of information or material covered by this Protective Order, or to subject itself to any
7 penalties for noncompliance with any legal process or order, or to seek any relief from this Court.

8 IT IS SO STIPULATED BY AND BETWEEN THE PARTIES.

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SO ORDERED

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Based upon the foregoing Stipulation and good cause appearing therefor,

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IT IS HEREBY ORDERED that the meanings and provisions contained in the foregoing
14 Protective Order concerning the use and/or disclosure of Confidential Information shall be
15 effective as to all parties for the purposes of this litigation and all related matters.

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IT IS SO ORDERED.

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18 Date: _____

THE HONORABLE SUSAN ILLSTON

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EXHIBIT A: AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

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I, the undersigned, _____ (print or type name),

hereby acknowledge that I have received a copy of the Stipulated Protective Order (the "Order")

entered on _____, 2006 in the matter entitled "*PB Farradyne, Inc. v. Thomas D.*

Peterson individually and doing business as Traffic Assist," Case No. C-05-3447 (SI), pending in

the United States District Court for the Northern District of California. My business/residence

address is:

I hereby acknowledge that I have received a copy of the Order, have read and understand
the Order, and agree to (1) be bound by all of the provisions thereof, (2) submit to the jurisdiction
of the United States District Court for the Northern District of California for purposes of enforcing
the Order, and (3) hereby appoint _____, (print or type name),

at _____ (print or type address),

as my California agent for service of process in connection with this action.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct, and that this Agreement was executed on the _____ day of
_____, 2006, at _____.

Signature